IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 14026 of 2004

Between:

G. Dinesh Kumar Reddy, B.Com., L.L.B., S/o. Late Sri G. Ranga Reddy,S.T.S(O),C/o.S.D.E. Cables,
R/o. D.No. 11-422-3-2-20A1, P & T Colony, Extension, Madanapalle - 517 325, Chittoor District.

..... PETITIONER

AND

1 The Chief General Manager Telecom., Bharat Sanchar Nigam Limited (A Govt. of India Enterprise),
Andhra Pradesh Circle, Doorasanchar Bhavan, Nampally

Station Road, Hyderabad - 500 001.
2 The Chairman & Managing Director, Bharat Sanchar Nigam

Limited, New Delhi - 500 001.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus holding action of 1st respondent in rejecting the petitioner's case for compassionate appointment for Group-C post by his Proceedings No. Lr.No. TA/STA / 13-17-2004, dt.13/5/04 is illegal and arbitrary and against to the rules and in violation of Art.14 of the Constitution of India and consequently direct the respondents to provide employment to the petitioner for Group-C post under compassionate grounds.

Counsel for the Petitioner: MR.D.KODANDARAMI REDDY

Counsel for the Respondents: MR.KANTHI.NARAHARI

The Court made the following:

-

-

-

-

ORDER:

-

This writ petition is filed to declare the action of the
first respondent in rejecting the case of the petitioner for compassionate appointment for in Group-C post by proceedings in LR.No.TA/STA(R)/13-017/2004, dated 13-05-2004 as illegal and arbitrary and to direct the respondents to provide employment to him for Group-C post under compassionate grounds.

The brief facts that are necessary for disposal of the present writ petition may be stated as follows:

The case of the petitioner is that his father died due to heart attack in harness on 09-04-2003 while he was in service in the respondents-corporation. The petitioner is a graduate
of B.Com, L.L.B and also possesses Diploma in Systems Management, P.G. Diploma in Computer Applications and also has knowledge in various civil laws and criminal laws and Labour, Taxation etc. The petitioner is the only male member to look after the family needs. The daughter of the deceased is studying third year Master of Computer Applications at Bangalore. Therefore, the petitioner made an application
for compassionate appointment to the first respondent on
19-11-2003. The first respondent by proceedings dated
13-05-2004 rejected his request for compassionate appointment on the ground that his family was not in distressed condition. The review petition was also filed. While rejecting the application of the petitioner, the Appointments in Relaxation of Recruitment Rules Committee concentrated on the terminal benefits mentioned in part-A Column No.3 of the application. But column No.4 of the particulars of liabilities are not taken into consideration as the deceased was indebted and discharge the loans of private persons to a tune of Rs.3,89,640/- and the department recovered a sum of Rs.9,510/- and all the documentary evidence enclosed with true particulars of facts of liabilities was not considered. There is one unmarried studying

daughter in the family and two widows are depending upon the earnings of the deceased and the petitioner is also depending upon his father and therefore the retrial benefits of his father are unable to meet the necessities for the course of entire life. From the date of death of his father till the date of the impugned order, the A.R.R.R. Committee considered more than 210 appointments under the cadre of Group-D and Group-C, but the case of the petitioner was not considered, which is illegal and arbitrary. Therefore, he prays to allow the writ petition.

A detailed counter affidavit has been filed by the respondents stating that in pursuance of the application of the petitioner for compassionate appointment, the Circle High Power Committee, which met on 29-04-2004, examined his case and rejected in view of the pensionary and other benefits received by his family. The wife of the deceased is drawing family pension of Rs.7,455/- per month and possesses an immovable property of an old ancestral house and got other benefits also and therefore the Committee opined that the family of the deceased is not living in distressed condition and rejected the claim of the petitioner for compassionate appointment.

It is also stated that on receipt of a representation from the petitioner seeking reconsideration of his candidature for compassionate appointment, the competent authority has once again reviewed the case on 06-07-2004 and after careful examination, the Committee rejected his case on the ground that the family of the deceased is getting sufficient family pension and the petitioner is grown up and if he competes for competitive examinations, he may get better opportunities. Therefore, the respondents pray to dismiss the writ petition. The learned counsel appearing for the petitioner contended that without any reasons and application of mind, the case of the petitioner was rejected, which is arbitrary exercise of power;
that the family pension and other terminal benefits cannot be taken as a ground for rejection of appointment; that lump sum amount received by the family of the deceased cannot be a substitute for compassionate appointment; that the petitioner is a highly qualified person, who can be appointed in Group-C post and hence he prays to allow the writ petition.

On the other hand, the learned counsel appearing for the respondents contended that the petitioner cannot have any right of appointment on compassionate grounds; that the petitioner is a well qualified person and he can seek employment anywhere; that the family of the deceased is not in a distressed condition so as to appoint the

petitioner on compassionate grounds and therefore, he prays to dismiss the writ petition.

The father of the petitioner died due to heart attack in harness on 09-04-2003 leaving behind the family consisting of the petitioner, wife of the deceased, daughter of the deceased and mother of the deceased. The petitioner was a graduate of B.Com., L.L.B. He was also possesses Diploma in Systems Management, P.G.Diploma in Computer Applications and also has knowledge in various civil laws and criminal laws and Labour, Taxation etc. The petitioner is the only male member to look after the family needs. The daughter of the deceased is studying third year Master of Computer Applications at Bangalore. The petitioner made an application for compassionate appointment to the first respondent. But the first respondent by proceedings dated 13-05-2004 rejected his request on the ground that his family was not in distressed condition. The review petition was also filed. The impugned proceedings dated 13-05-2004 reads as follows:

> "Please refer to your request for appointment on compassionate grounds in relaxation of recruitment rules for a Group-'C' post. The High Power Committee, which met on 29/04/2004, has *examined* the case and the committee is of the opinion that the family is not in distressed condition. Hence, I am directed to intimate that it has been decided to *reject* the request for appointment on compassionate grounds."

As seen from the counter affidavit, the family of the deceased was getting the following benefits:

1) Family pension : Rs.5,250+2,195=Rs.7,445/-

2) D.C.R.G. : Rs.3,50,000/-

3) GPF Balance : Rs.1,08,909/-

4) Group insurance : Rs.47,760/-

5) Leave encashment : Rs.1,49,720/-

6. Immovable property

(own house) : Rs.25,000/-

Basing on the above material, the High Power Committee came to the conclusion that the family of the petitioner was not living in distressed condition.

The learned counsel appearing for the petitioner placed strong reliance on the decision reported in **BALBIR KAUR v. STEEL AUTHORITY OF INDIA LTD.** , wherein

it was held:

> "Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the employees' union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter resigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

From the above decision, it is clear that the Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointment.

In the Digestive Notes of Other High Courts reported in 2003 (5) ALT 7.1 (DN OHC), it was held:

> "The retiral benefits received by the family could not be taken into account for the purpose of denying the appointment on compassionate grounds."

In another decision reported in **KANTI SRIVASTAVA v. STATE BANK OF INDIA ,** it was held:

> "In the last it was observed that it is not that monetary benefit would be replacement of the bread earner but that would undoubtedly bring some solace to the situation. It would thus appear that the lump sum amount received by the family of the deceased cannot be a substitute for employment to be offered to any eligible member of the family of the deceased in order to keep the pot of family boiling after the death of the sole bread earner."

In another decision reported in **SUSHMA GOSAIN v. UNION OF INDIA ,** it was held:

> "The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

He also relied upon an unreported judgment of this Court in **GODAVARI CHANDRASEKHAR v. CHIEF GENERAL MANAGER** (W.P.20217 of 2004, dated 28-12-2004), wherein it was held:

> "While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities including the benefits received under the various welfare schemes mentioned above."

On the other hand, the learned counsel appearing for the respondents placed a strong reliance on the decision reported in **PUNJAB NATIONAL BANK AND ORS. v. ASHWINI KUMAR TANEJA** , wherein it was held:

> "One other thing which needs to be considered is whether the retrial benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what had been held recently in *The General Manager (D & P.B.) & Ors. v. Kunti Twary & Anr.,* Civil Appeal 126 of 2004 disposed of on 5.1.2004. It was categorically held that the amounts have to be taken into consideration."

It is pertinent to refer to a decision reported in **NATIONAL HYDROELECTRICAL POWER CORPN V. NANAK CHAND** , wherein it was held:

> "It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the recruitment regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over the sudden financial crisis."

Therefore, from the above decision it is very clear that the purpose of providing

appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. The sympathy has no role to play when there are regulations framed for appointment on compassionate grounds.

The Regulations applicable for appointment on compassionate grounds have not been filed by either of the parties. But at the same time, there are Rules or Regulations governing the appointments on compassionate grounds in the respondents-corporation. Even the administrative authorities are required to record reasons. The reasons must enable the parties to understand why the matter was decided and what conclusions were reached on the controversial issues.

As seen from the impugned order, it is clear that the High Power Committee rejected the case of the petitioner, but the impugned order does not indicate what was the material placed before the High Power Committee and what was the decision taken by it in rejecting the claim of the petitioner for appointment on compassionate grounds. No doubt, in the counter affidavit, though it is stated that the family of the petitioner is getting Rs.7,445/- towards pension and also substantial amounts have been received, but at the same time, the authority who rejected his case is expected to record reasons in the impugned proceedings. In the absence of the any reasons in the impugned proceedings, the same cannot be substituted by filing a counter affidavit. Therefore, the impugned order passed by the respondents is liable to be set aside.

Hence, the respondents are directed to place the matter before the High Power Committee and the High Power Committee shall decide the case of the petitioner as per the Rules and Law laid down by the Supreme Court referred to herein above. The said exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No order as to costs.

_____

JUSTICE K.C.BHANU

Date: 08-07-2005

YCR

Note:

Issue C.C. in two days.

B/o

YCR

To

1 The Chief General Manager Telecom., Bharat Sanchar Nigam Limited (A Govt. of India Enterprise),
Andhra Pradesh Circle, Doorasanchar Bhavan, Nampally

Station Road, Hyderabad - 500 001.
2 The Chairman & Managing Director, Bharat Sanchar Nigam

Limited, New Delhi - 500 001.

3. 2 C.D. copies.